

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

---

June 14, 2001

---

GSBCA 15548-TRAV, 15549-TRAV, 15550-TRAV,  
15551-TRAV, 15552-TRAV, 15553-TRAV, 15554-TRAV,  
15555-TRAV, 15556-TRAV, 15557-TRAV, 15558-TRAV

In the Matters of LEO McMANUS, NATALIE FUNK,  
CHRISTA BUCKS, NELDA LEVY, STACEY SYES,  
MARIA ARREDONADO, JUDY ASHTON, REGINA BOWDEN,  
BILL JOHNSON-BEY, JENNIFER DeBOY, and REGGIE SAJAUSKAS

Leo McManus, Baltimore, MD, Claimant in GSBCA 15548-TRAV.

Natalie Funk, Baltimore, MD, Claimant in GSBCA 15549-TRAV.

Christa Bucks, Baltimore, MD, Claimant in GSBCA 15550-TRAV.

Nelda Levy, Baltimore, MD, Claimant in GSBCA 15551-TRAV.

Stacey Syes, Baltimore, MD, Claimant in GSBCA 15552-TRAV.

Maria Arredonado, Baltimore, MD, Claimant in GSBCA 15553-TRAV.

Judy Ashton, Baltimore, MD, Claimant in GSBCA 15554-TRAV.

Regina Bowden, Baltimore, MD, Claimant in GSBCA 15555-TRAV.

Bill Johnson-Bey, Baltimore, MD, Claimant in GSBCA 15556-TRAV.

Jennifer DeBoy, Baltimore, MD, Claimant in GSBCA 15557-TRAV.

Reggie Sajauskas, Baltimore, MD, Claimant in GSBCA 15558-TRAV.

J. Patrick O'Toole, Director, Division of Travel, Social Security Administration,  
Baltimore, MD, appearing for the Social Security Administration.

**BORWICK**, Board Judge.

In this matter eleven employees of the Social Security Administration (SSA or agency) incurred subsistence expenses when, at the agency's direction, they attended a conference and

stayed overnight within the designated area of their permanent duty station (PDS). The agency then refused to pay the subsistence expenses of two of the employees and has announced its intention to seek refunds from the remaining nine whom the agency had paid. The agency's actions are in accord with statute and the implementing Federal Travel Regulation (FTR) since there is no entitlement to subsistence expenses within the designated area of the PDS.

The facts indicated by the record are as follows. On or about November 11, 2000, the agency's Office of Employment Support Programs (OESP) issued travel orders to eleven of its insurance specialists to attend a State Partnership Initiative (SPI) conference in Annapolis, Maryland. Each travel order authorized lodging at \$90 per day and per diem of \$42 for meals and incidental expenses (M&IE). On each travel order, the agency justified the expense on the ground that "staying overnight [was] required due to early morning and late night meetings." The agency authorized lodging on an actual expense basis because, it explained, no rooms were available at the Government rate.

Baltimore, Maryland, was the duty station for nine of the eleven conference attendees; Ellicott City, Maryland, and Pikesville, Maryland, were the official stations for the remaining two attendees.

According to the agency, the purpose of the conference was to "allow the State project managers to inform each other and the [agency] about progress being made on their projects with cooperative agreement funding." The agency also explained that it had a contract with Virginia Commonwealth University (VCU) to provide technical support and assistance in monitoring SPI projects. An important meeting between SSA and VCU had to be scheduled between 7:00 and 10:00 p.m. on the night of December 12, because there was no time in the working day to schedule that meeting. Also, all but two the attendees were new to the OESP team, and it was useful for the new members to meet with VCU and gain an understanding of the projects for which the new team members would be responsible. Had the new team members not stayed the night, the agency says OESP employees would have had to make separate trips to Richmond or for orientation with VCU. By staying overnight in Annapolis, the employees saved the Government the cost of separate orientation trips.

Three SSA staff members also stayed the night of December 13 to prepare the next morning for a meeting with VCU and several state SPI representatives to discuss fulfilling a separate legislative requirement involving SPI states. This meeting was scheduled to follow the SPI project conference because meeting with the state officials present at the SPI meeting was more sensible than holding a separate conference at another place and time.

After the conference, the agency paid the subsistence costs for nine of the attendees, but did not pay the subsistence costs for two of them (Ms. Regina Sajauskas and Ms. Stacey Syes). The agency then determined that reimbursement of subsistence expenses could not be allowed:

Although travel authorizations were issued for these employees to receive subsistence expenses within the metropolitan area of the official station, in the absence of [a] specific, statutory authority for approval, we believe we cannot

authorize reimbursement of subsistence expenses within the official station. Even though early morning/late night sessions were scheduled, we believe this does not provide a legal basis for reimbursement of per diem at the official station.

The agency has stated that it intends to seek refunds from the nine attendees at the conference who were paid subsistence expenses and not pay those who have not received payment for such expenses.

Statute provides that an employee is entitled to per diem and subsistence expenses when the employee is "traveling on official business away from the employee's designated post of duty." 5 U.S.C. § 5702(a) (1994). The implementing FTR provides that an employee is eligible for a travel allowance when the employee "perform[s] official travel away from your official duty station, or other areas defined by your agency." 41 CFR 301-11.1(a) (2000). Here, the agency has defined the official station for all employees in the metropolitan Baltimore area as including the City of Baltimore and all of the Maryland counties of Baltimore, Anne Arundel, Carroll, Harford, and Howard. SSA Administrative Instructions Manual ¶ 07.13.02 (C)(1). The City of Annapolis is in Anne Arundel County. 41 CFR Ch. 301 app. A. Ellicott City is in Howard County, and Pikesville is in Baltimore County. Consequently, the employee's travel from Baltimore (or from Ellicott City or Pikesville) to Annapolis was not "official travel away from [the employee's] official duty station or other areas defined," as required by statute and the FTR.

The General Accounting Office long recognized that employees are not entitled to reimbursement of subsistence costs at the official station even when reimbursement was authorized by the agency because of unusual working conditions, such as--here--the necessity of attending meetings at odd times. William Perketete, 71 Comp. Gen. 517 (1992); Nancy Blustein, 68 Comp. Gen. 46 (1988). Our decisions are consistent with these rulings. Ollice C. Holden, GSBCA 15175-TRAV, 00-1 BCA ¶ 30,815; Murray Lumpkin, GSBCA 14513-TRAV, 98-2 BCA ¶ 30,042.<sup>1</sup>

The agency correctly applied statute and regulation in refusing to pay subsistence for two of the claimants and is entitled to seek refunds from the remaining nine attendees. It is unfortunate that the agency required the employees to incur subsistence expenses in the first place. Nevertheless, the agency's erroneous actions cannot create an entitlement that violates statute and regulation. Office of Personnel Management v. Richmond, 496 U.S. 417, 425-26, 434 (1990).

---

<sup>1</sup> Under the Government Employees Training Act (GETA), agencies may pay lodging and subsistence expenses for attendance at training conferences regardless of whether the training is at the duty station. 5 U.S.C. § 4109(a); B-193034 (July 31, 1979). The agency does not argue, and there is no showing, that the conference here was "training" within the meaning of the GETA. 5 U.S.C. § 4101(4).

GSBCA 15548-TRAV, 15549-TRAV, 15550-TRAV, 15551-TRAV, 15552-TRAV 4  
15553-TRAV, 15554-TRAV, 15555-TRAV, 15556-TRAV, 15557-TRAV, 15558-TRAV

ANTHONY S. BORWICK  
Board Judge